

# MFSA

## MALTA FINANCIAL SERVICES AUTHORITY

### **Circular addressed to the financial services industry regarding Malta's transposition of the Markets in Financial Instruments Directive ('MiFID')**

*The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly these proposals are not binding and are subject to changes and revisions following representations received not only from licence-holders and other involved parties, but also following the necessary review and vetting by the Office of the Attorney General and the relevant Minister to whom the MFSA is required by law to provide advice on financial services matters. It is important that persons involved in the consultation bear these considerations in mind.*

*In the case of primary legislation in particular, Bills may and do undergo revisions during the Parliamentary stages.*

*This consultation is also being exercised at the request and on behalf of the Ministry of Finance.*

*The MFSA invites comments by not later than Monday 2<sup>nd</sup> July 2007, on the proposed Legal Notices - attached hereto - to be issued under the Financial Markets Act, 1990 and the Investment Services Act, 1994 to transpose MiFID. Interested parties are to send their comments in writing addressed to the Director – Securities Unit, MFSA.*

### **1.0 Background**

As part of the transposition of the MiFID into Maltese law, certain changes to the local legal and regulatory framework are required. These include:

- (a) Amendments to the Financial Markets Act, 1990 and the Investment Services Act, 1994;
- (b) The issue of a number of new Legal Notices as well as the amendment of certain Legal Notices issued under the above mentioned Acts;
- (c) Revisions to the current Investment Services Guidelines.

With respect to (a) above, MFSA has, on the **16<sup>th</sup> March 2007** issued a consultation document which invited comments (by the 18<sup>th</sup> April) on the proposed amendments to the Financial Markets Act, 1990 and to the Investment Services Act, 1994. The MFSA has not received any feedback recommending any changes to the proposed amendments to the above-mentioned Acts.

With respect to (c) above, on the **31<sup>st</sup> January 2007**, MFSA issued the Draft Investment Services Rules which will apply to Investment Services Licence Holders. These Rules transpose certain parts of the MIFID Framework Directive and the requirements of the Implementing Directive relevant to investment firms. Subject to the supporting legal framework being in place, these new Rules are scheduled to come in to force on the **1<sup>st</sup> November 2007** and will replace the current Investment Services Guidelines applicable to Investment Services Licence Holders.

The purpose of this circular is to serve as a consultation document for the proposed new Legal Notices and for the proposed amendments to a number of existing Legal Notices issued under the Financial Markets Act, 1990 and the Investment Services Act, 1994 and which are necessary to transpose parts of the requirements of the MIFID

## **2.0 Proposed Legal Notices to be issued under the Financial Markets Act, 1990 (FMA)**

### ***2.1 Financial Markets Act (Transparency) Regulations, 2007***

The proposed new FMA (Transparency) Regulations which will repeal and replace the current Recognised Investment Exchange (Transparency) Regulations, 2004, aim to transpose articles 44 and 45 of the MiFID Framework Directive which deal with pre-trade and post-trade transparency requirements for regulated markets.

### ***2.2 European Rights for Regulated Markets Regulations, 2007***

The aim of these proposed new regulations is to allow a regulated market which operates without the need for a physical presence, the right to provide appropriate arrangements in a Member State other than that in which it has been authorised, so as to facilitate access to and trading on such market by remote members or participants established in the territory of that other Member State. These regulations have the purpose of implementing article 42 (6) of the MiFID Framework Directive.

### ***2.3 Membership and Access (Amendment) Regulations, 2007***

The purpose of these proposed regulations is bring the requirements of the current Membership and Access Regulations, 2004 (L.N. 285 of 2004) in line with the provisions of articles 33 and 42 (3) of the MiFID Framework Directive which refer to the eligibility criteria which regulated markets need to take account of when admitting members and providing them with access to their trading facilities.

### ***2.4 Regulated Markets (Authorisation Requirements) Regulations, 2007***

These proposed regulations set the requirements which a regulated market must satisfy pre and post authorization. They aim to transpose articles 37, 39, 42 and 43 of the MiFID Framework Directive and will repeal and replace the current Recognised Investment Exchange (Recognition Requirements) Regulations, 2004.

### ***2.5 Financial Markets Act (Off-Market Deals) Regulations, 2007***

These purpose of these proposed regulations which will repeal and replace the current Off-Exchange Trading Regulations, 2004 as amended, is to set the regulatory framework within which off-market deals in financial instruments quoted on a regulated market may

take place. The proposed new regulations ensure that, while any inconsistencies with the requirements of MiFID are removed, the current state of affairs with respect to off-exchange trading market transparency [which provides for proper market transparency and eliminates any possible fragmentation of market data] is retained.

### **3.0 Proposed Legal Notices Issued under the Investment Services Act, 1994 (ISA).**

#### ***3.1 Appointment of Tied Agents Regulations, 2007***

As stated in MFSA's circular dated 12<sup>th</sup> April 2007, MFSA will be introducing a new regime enabling Investment Services Licence Holders to appoint tied agents as provided for in Article 23 of the MiFID Framework Directive.

In terms of the proposed new Appointment of Tied Agents Regulations, 2007, tied agents may either be bodies corporate or individuals, and are subject to registration by the MFSA. A public register will be kept for this purpose. MFSA will only admit persons to this register, once it is satisfied that they are of sufficiently good repute and that they possess appropriate general, commercial and professional knowledge as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client.

Tied agents will not be authorised to hold and control clients' money and will not be subject to any financial resources requirements. Moreover, an Investment Services Licence Holder appointing tied agents shall remain fully and unconditionally responsible for the acts or omissions of the tied agents which it appoints when such tied agents are acting on behalf of the Licence Holder. Accordingly, Investment Services Licence Holders shall be required to monitor the activities of their tied agents in order to ensure that they continue to comply with the requirements of this Legal Notice and of the Investment Services Rules.

MFSA intends to supplement the current draft Investment Services Rules by additional Rules to apply to Licence Holders appointing tied agents. These will be circulated for consultation in due course.

#### ***3.2 European Passport Rights for Investment Firms Regulations, 2007.***

The MiFID has improved the 'passport' for investment firms by more clearly delineating the allocation of responsibility between home state and host state for passported branches and generally clarifying some of the jurisdictional uncertainties that arose under the Investment Services Directive ('ISD'). The prudential supervision of investment firms remains the duty of the Home State. Moreover, the conduct of business rules that apply to cross-border business will be those of the state of origin in relation to the relevant service. For the most part the state of origin will be the firm's Home State. In the case of branches established in Member States other than the Home State of the investment firm, the competent authority of the Host Member State will remain responsible for certain requirements relating mainly to conduct of business, transaction reporting and pricing disclosures.

Moreover, the notification procedure to be followed by investment firms wishing to establish a branch or provide cross border services in other EU/EEA Member States has been simplified.

In light of the above, it is proposed that the current European Rights for Investment Firms Regulations, 2004, as amended, be repealed and replaced by the proposed new regulations.

### ***3.3 European Passport Rights for Persons Operating Multilateral trading Facilities Regulations, 2007.***

This purpose of this proposed new Legal Notice is to allow operators of Multilateral Trading Facilities ('MTFs') in Malta to set up facilities in other EU/EEA States such that persons in those States would be able to access the MTF established in Malta. Conversely, operators of MTFs based in other EU/EEA Member States would be able to provide facilities in Malta such that local persons may access such MTFs.

### ***3.4 Investment Services Act (Exemption) Regulations, 2007.***

These proposed regulations which will repeal and replace the current ISA (Exemption) Regulations, as amended, aim to:

- a. align the current terminology and wording with that of the revised wording of Schedule 2 to the Investment Services Act, 1994;
- b. transpose Article 2 of the MiFID Framework Directive which lays down a list of the persons to whom MiFID does not apply;
- c. introduce a new exemption for regulated markets and persons operating a regulated market which are also operating an MTF.

Moreover, the current exemption contained in Regulation 3(1)(j) relating to persons giving advice in the course of expressing an opinion or view in the media, no longer features in the proposed new regulations since the provision of opinions and/or recommendations by such persons no longer falls within the proposed new definition of investment advice in Schedule 1 of the Investment Services Act, 1994 which links the provision of investment advice to a personal recommendation. It is to be noted however that issuers of general investment recommendations aimed for distribution channels or for the media are nonetheless subject to provisions of the Prevention of Financial Markets Abuse (Fair Presentation and Investment Recommendations and Disclosure of Conflicts of Interest) Regulations, 2005 (LN 106 of 2005).

### ***3.5 Investment Services Act (Licence and Other Fees) Regulations, 2007***

The purpose of these proposed new regulations, which will repeal and replace the current ISA (Licence and Other Fees) Regulations, 2006, is to:

- a. revise the descriptions of the different Categories of Investment Services Licences to bring them in line with the proposed new services to be included in Schedule 1 of the Investment Services Act, 1994, which in turn transposes Section 1 of Annex 1 of the MiFID Framework Directive;
- b. replace all references to "private clients" with "retail clients" and "non-private clients" with "professional clients" and "eligible counterparties" in order to ensure the use of consistent terminology between these regulations and the Investment Services Rules.

- c. include the fees applicable to the registration of tied agents as per the proposed Appointment of Tied Agents Regulations described in point 3.1 above. In this regard, it should be noted that where a tied agent is a corporate entity, in addition to the LM125 registration/supervisory fee, it is proposed that a further LM75 will be payable per individual employed by such corporate entity who is directly involved in the provision of tied agent activities.

**Contacts**

**Should you have any queries regarding MiFID, please do not hesitate to contact:**

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**Chairman**  
**Malta Financial Services**  
**Authority**

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**Prime Minister and**  
**Minister of Finance**

L.N. of 2007

**FINANCIAL MARKETS ACT**  
**(CAP. 345)**

**Financial Markets Act (Transparency) Regulations, 2007**

IN exercise of the powers conferred by article 3 of the Financial Markets Act, the Prime Minister and Minister of Finance, acting on the advice of the Malta Financial Services Authority as the competent authority for the purposes of the Act, has made the following regulations:

Title and  
commencement.

**1.** The title of these regulations is the Financial Markets Act (Transparency) Regulations, 2007.

Interpretation.

**2.** (1) In these Regulations, unless the context otherwise requires:

“Act” means the Financial Markets Act;

“European investment firm” means an investment firm as defined in Article 4(1) of the Directive, authorized by its European regulatory authority within the meaning of Article 5 of the said Directive;

“European right” means the entitlement of a person to establish a branch, or provide services, in a Member State or EEA State other than that in which it has its head office in terms of the Directive;

“investment services licence holder” means a person in respect of whom the competent authority has issued a licence in terms of the Investment Services Act, 1994.

(2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.

Scope.

**3.** These regulations set out the transparency requirements which must be satisfied on a continuing and on-going basis by regulated markets.

Regulated  
Markets Pre-  
trade  
transparency  
requirements.

**4.** (1) Regulated markets shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for shares admitted to trading. This information shall be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours.

(2) Regulated markets may give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under sub-regulation (1) of this regulation to investment services licence holders and European investment firms that are obliged to publish their quotes in shares.

(3) The competent authority may waive the obligation for regulated markets to make public information referred to in sub-regulation (1) of this regulation based on the market model or the type and size of orders as provided in the cases referred to in the Commission Regulation. In particular, the competent authority shall be able to waive the obligation in respect of transactions that are large in scale compared with normal market size for the share or type of share in question.

(4) The competent authority and regulated markets shall also comply with the applicable provisions of the Commission Regulation as may be amended from time to time.

Regulated  
Markets Post-  
trade  
transparency  
requirements.

**5.** (1) Regulated markets shall make public the price, volume and time of the transactions executed in respect of shares admitted to trading on a regulated market. Such details of all such transactions shall be made public, on a reasonable commercial basis and as close to real-time as possible.

(2) Regulated markets may give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under sub-regulation (1) of this regulation to investment services licence holders and European investment firms that are obliged to publish their transactions in shares.

(3) The competent authority may authorise regulated markets to provide for deferred publication of the details of transactions based on the type or size of these transactions. In particular, the competent authority may authorise the deferred publication in respect of transactions that are large in scale compared with the normal market size for that share or that class of shares. Regulated markets shall obtain the prior approval of the competent authority of proposed arrangements for deferred trade-publication, and shall clearly disclose these arrangements be to market participants and the investing public.

(4) The competent authority and regulated markets shall also comply with the applicable of provisions of the Commission Regulation as may be amended from time to time.

Repeal of L.N.  
491 of 2004.

**6.** The Recognised Investment Exchange (Transparency) Regulations, 2004, are hereby repealed.

Objective.

**7.** The objective of these regulations is to implement **Articles 44 and 45** of the Directive **and** shall be interpreted and applied accordingly.



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**Chairman  
Malta Financial Services  
Authority**

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**Prime Minister and  
Minister of Finance**

**L.N. of 2007**

**FINANCIAL MARKETS ACT  
(CAP. 345)**

**European Rights for Regulated Markets Regulations, 2007**

IN exercise of the powers conferred by article 3 of the Financial Markets Act, the Prime Minister and Minister of Finance, acting on the advice of the Malta Financial Services Authority as the competent authority for the purposes of the Act, has made the following regulations:

Title.           **1.**    The title of these regulations is the European Rights for Regulated Markets Regulations, 2007.

Interpretation.   **2.** (1)    In these regulations, unless the context otherwise requires:

“Act” means the Financial Markets Act;

“competent authority” means the Malta Financial Services Authority appointed under article 2 of the Act;

“European regulated market” means a regulated market as defined in Article 4 (1) (14) of the Directive authorized by its European regulatory authority within the meaning of Article 36 of the Directive;

“European right” means the entitlement of a Maltese or a European regulated market to provide appropriate arrangements in a Member State or EEA State other than that in which it has been authorised, so as to facilitate access to and trading on such a market by remote members or participants established in the territory of that other Member State or EEA State;

“Home Member State or EEA State” means the Member State or EEA State in which the regulated market is registered or, if under the law of that Member State or EEA State it has no registered office, the Member State or EEA State in which the head office of the regulated market is situated;

“Host Member State or EEA State” means the Member State or EEA State in which a Maltese regulated market provides appropriate arrangements so as to facilitate access to trading on its system by remote members or participants established in that same Member State or EEA State;

“Maltese regulated market” means a regulated market authorised in terms of the Act that is entitled to carry on an activity in exercise of a European right a Member State or EEA State other than Malta;

(2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.

### **Part I – Exercise of European Right by European Regulated Markets**

Exercise of European rights by European regulated markets.

**3.** (1) A European regulated market may exercise a European right in Malta.

(2) A European regulated market that intends to exercise a European right in Malta shall be obliged to give the European regulatory authority of its home Member State or EEA State a notice of its intention to exercise a European right in Malta.

(3) The European regulatory authority shall communicate, within one month, the information provided in terms of sub-regulations (2) to the competent authority.

(4) The European regulatory authority shall, on the request of the competent authority and within a reasonable time, communicate the identity of the members or participants of the European regulated market.

### **Part II – Exercise of European Rights by Maltese Regulated Markets**

Exercise of European rights by Maltese regulated markets

**4.** (1) A Maltese regulated market may exercise a European right in another Member State or EEA State.

(2) A Maltese regulated market that intends to exercise a European right in another Member State or EEA State shall be obliged to give the competent authority a notice of its intention to exercise such right wherein it shall indicate the Member State or the EEA State in which it intends to provide such arrangements

(3) The competent authority shall communicate, within one month, the information provided in terms of sub-regulation (2) to the European regulatory authority of the host Member State or EEA State.

(4) The competent authority shall, on the request of the European regulatory authority of the host Member State or EEA State and within a reasonable time, communicate the identity of the members or participants of the Maltese regulated market.

Objective.

**5.** The purpose of these regulations is to implement Article 42 (6) of the Directive and shall be interpreted and applied accordingly.

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**Chairman  
Malta Financial Services  
Authority**

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**Prime Minister and  
Minister of Finance**

**L.N. of 2007**

**FINANCIAL MARKETS ACT  
(CAP. 345)**

**Membership and Access (Amendment) Regulations, 2007**

IN exercise of the powers conferred by article 49 of the Financial Markets Act, the Prime Minister and Minister of Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

Citation.

L.N. 285 of 2004.

Amendment of  
regulation 2 of the  
principal  
regulations.

**1.** The title of these regulations is the Membership and Access (Amendment) Regulations, 2007 and they shall be read and construed as one with the Membership and Access Regulations, 2004, hereinafter referred to as “the principal regulations”.

**2.** Regulation 2 of the principal regulations shall be amended as follows:

(a) regulation 2 shall be re-numbered as regulation 2 (1);

(b) in regulation 2(1) as re-numbered:

(i) for the definition “credit institution”, there shall be substituted the following:

“ “European credit institution” means a credit institution as defined in article 4 of Directive 2006/49/EC, authorized by its European regulatory authority within the meaning of article 4 thereof, which authorization covers one or more of the investment services listed in Annex I to the Directive;”

(ii) the definitions “Directive” and “EEA State” shall be deleted;

(iii) for the definition “European investment firm”, there shall be substituted the following:

“ “European investment firm” means an investment firm as defined in Article 4 of the Directive authorized by its European regulatory authority within the meaning of Article 5 of the Directive to carry out the services referred to in Sections (2) and (3) of Annex I to the Directive;”;

(iv) the definition “foreign authority” shall be deleted;

(v) the definition “Member State” shall be deleted;

(vi) for the definition “recognized investment exchange” there shall be substituted the following:

(g) in the definition “supervisory authority” and wherever else it appears in these Regulations, for the word “foreign authority”, there shall be substituted the words “European regulatory authority”.

(c) immediately after regulation 2 (1) of these regulations there shall be inserted the following new sub-regulation (2):

“(2) For the purposes of these regulations:

(a) “Persons licensed under the Investment Services Act, 1994” shall mean persons licensed to execute orders on behalf of other persons and, or to deal on own account in terms of the Schedule to the Investment Services Act; and

(b) “Regulated Market” refers to a market authorized within the meaning of article 4 of the Act”.

Re-numbering of regulations to the principal regulations

**3.** Regulations 3, 4, 5, 6 and 7 of the principal regulations shall be re-numbered as regulations 4, 5, 6, 7 and 9 respectively.

Insertion of new regulation 3 to the principal regulations.

**4.** Immediately after regulation 2 of the principal regulations, there shall be inserted the following new regulation 3:

“Membership of a regulated market.

3. Persons licensed under the Investment Services Act, 1994 may become members of a regulated market and may participate in the clearing and settlement system provided for members of such a regulated market.”.

Amendment of regulation 6 to the principal regulations

**5.** Regulation 6 of the principal regulations, as re-numbered, shall be amended as follows:

(a) in sub-article (1) thereof, for the words “European investment firms which”, there shall be substituted the words “Persons licensed under the Investment Services Act, 1994 and European investment firms which”;

(b) in sub-article (3) thereof, for the words “European investment firms referred to”, there shall be substituted the words “Persons licensed under the Investment Services Act, 1994 and European investment firms referred to”.

Amendment of regulation 6 as re-numbered of the principal regulations.

**6.** Regulation 6 as re-numbered shall be amended as follows:

(a) for the word “rules” wherever it appears there shall be substituted the word “bye-laws”;

(b) in sub-regulation (3) thereof for the words “in terms of Directive 93/6/EC” there shall be substituted the words “in terms of Directive 2006/49/EC”.

Insertion of new regulation 8 to the principal regulations.

**7.** Immediately after regulation 7 as re-numbered, there shall be inserted the following new regulation 8:

“Other persons that may be admitted as members or participants.

**8.** Regulated markets may also admit as members or participants persons who satisfy the following requirements::

(a) are fit and proper;

(b) have a sufficient level of trading ability and competence;

(c) have, where applicable, adequate organizational arrangements;

(d) have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the regulated market may have established in order to guarantee the adequate settlement transactions.

Amendment of Regulation 9 as re-numbered of the principal Regulations.

**7.** For Regulation 9 as re-numbered there shall be substituted the following:

“9. The objective of these Regulations is to implement Articles 33 and 42(3) of the Directive and shall be interpreted and applied accordingly.”.



**L.N. of 2007**

**FINANCIAL MARKETS ACT**  
**(CAP. 345)**

**Regulated Markets (Authorisation Requirements) Regulations, 2007**

**1.** The title of these regulations is the Regulated Markets (Authorization Requirements) Regulations. Title.

**2.** (1) In these regulations, unless the context otherwise requires: Interpretation.

“Act” means the Financial Markets Act; Cap. 345.

“applicant” means a person who has submitted an application to the competent authority to become a regulated market;

“European regulated market” means a regulated market as defined in Article 4(1)(14) of the Directive authorised by its European regulatory authority within the meaning of Article 36 of the Directive;

“Schedule” means the Schedule to these regulations.

(2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.

**3.** (1) The Schedule sets out the authorization requirements which must be satisfied by an applicant if it is to qualify as a regulated market and which must be satisfied by each regulated market on a continuing and ongoing basis if it is to remain a regulated market. Authorization requirements.

(2) The burden of proving to the competent authority that the authorization requirements have been or are being properly satisfied rests exclusively on the applicant or the regulated market, as the case may be.

**4.** (1) In considering whether an applicant or a regulated market satisfies the authorization requirements applying to it under these regulations, the competent authority may take into account any other circumstances that it may deem relevant in each particular case. Satisfaction of authorization requirements.

(2) An applicant or a regulated market may satisfy authorization



requirements applying to it under these regulations by entering into an agreement to the satisfaction of the competent authority for any functions specified in the said agreement to be performed on its behalf by another person.

(3) An agreement of the kind mentioned in sub-regulation (2) shall be made in writing, and entered into between an applicant or a regulated market, as the case may be, and the person who is to perform any functions on behalf of such applicant or a regulated market. Such agreement shall be executed by duly authorised officials of the governing body of the respective entities.

(4) Where an applicant or a regulated market enters into any agreement of the kind mentioned in sub-regulation (2), any such agreement shall not affect the responsibility imposed by the Act on such applicant or regulated market to satisfy authorization requirements applying to it under these regulations.

(5) The liability of the regulated market for any breaches of the authorization requirements or any other regulations or Financial Market Rules issued under the Act, shall not be affected or reduced as a result of the regulated market entering any agreement of the kind mentioned in sub-regulation (2).

(6) Any person who, not being a regulated market, is to perform any specified function in terms of any agreement of the kind mentioned in sub-regulation (2) shall be confirmed, after due verification, by the applicant or the regulated market as the case may be, as being a fit and proper person being able and willing to perform such functions. This confirmation shall be made by the governing body of the applicant or regulated market, as the case may be, in the form of a written declaration to that effect which shall be submitted to the competent authority together with a duly authenticated true copy of the relevant agreement of the kind mentioned in sub-regulation (2).

(7) Notwithstanding anything in the foregoing, the regulated market shall be responsible towards the competent authority for the supervision of the proper performance of any functions performed by any person throughout any such period that any agreement of the kind mentioned in sub-regulation (2) shall remain in force.

**5.** The purpose of these regulations is to implement the relevant provisions of Articles 37, 39, 42 and 43 of the Directive and shall be interpreted and applied accordingly. Objective.

**6.** The Recognized Investment Exchange (Recognition Requirements) Regulations, 2003 are hereby being repealed. Repeal of L.N. 3 of 2003.

## **SCHEDULE (REGULATION 3) AUTHORISATION REQUIREMENTS**

### **Financial Resources**

1. (1) The regulated market must have financial resources sufficient for the proper performance of its functions.

(2) Without prejudice to the generality of the foregoing, each regulated market shall satisfy at all times those minimum financial resources requirements and minimum financial reporting requirements that may be required by the competent authority from time to time.

### **Requirements for the management of the regulated market**

2. (1) The regulated market must be a fit and proper person to perform its functions and be of good standing.

(2) The persons who effectively direct the business and the operations of a regulated market must satisfy the fit and proper criterion, by being of sufficient good repute and sufficiently experienced as to ensure the sound and prudent management and operation of the regulated market:

Provided that persons who already effectively direct the business and the operations of a regulated market or a European Regulated Market, may be deemed to automatically satisfy this requirement.

### **Organisational requirements**

3. (1) The regulated market shall have: arrangements to identify clearly and manage those potential adverse consequences, for the operation of the regulated market or for its participants, of any conflict of interest between the interest of the regulated market, its owners or its operator and the sound functioning of the regulated market, and in particular where such conflicts of interest might prove prejudicial to the accomplishment of any functions delegated to the regulated market by the competent authority.

(2) The regulated market must ensure that:

(a) all the systems and controls used in the performance of its functions are adequate and appropriate;

(b) it is adequately equipped to manage the risks to which it is exposed;

(c) it has appropriate arrangements and systems to identify all significant risks to its operations and it has effective measures to mitigate those risks;

(d) it has proper arrangements for the sound management of the technical operations of its systems, including the establishment of effective contingency arrangements to cope with risks of disruptions to these systems;

(e) it has effective arrangements to facilitate the efficient and timely finalisation of the transactions executed under its systems;

(3) The regulated market shall have transparent and non-discriminatory bye-laws and procedures to facilitate the efficient and timely finalisation of the transactions executed under its systems.

### **Access to a regulated market**

4. (1) The regulated market shall establish and maintain transparent and non-discriminatory bye-laws, based on objective criteria, governing access to or membership of the regulated market.

(2) Those bye-laws shall specify any obligations for the members or participants arising from:

(a) the constitution and administration of the regulated market;

(b) requirements relating to transactions on the market;

(c) professional standards imposed on the staff of the investment firms or credit institutions that are operating on the market;

(d) the conditions established, for members or participants other than investment services licence holders;

(e) the requirements and procedures for the clearing and settlement of transactions concluded on the regulated market.

(3) The operator of the regulated market shall communicate to the Competent Authority, on a regular basis, the list of its members and participants.

### **Monitoring of compliance with the bye-laws of the regulated market and with other legal obligations**

5. (1) Regulated markets shall:

(a) establish and maintain effective arrangements and procedures for the regular monitoring of the compliance by their members or participants with their bye-laws; and

(b) monitor the transactions undertaken by their members or participants under their systems in order to identify breaches of those bye-laws, disorderly trading conditions or conduct that may involve market abuse.

(2) Operators of the regulated markets shall:

(a) report significant breaches of their bye-laws or disorderly trading conditions or conduct that may involve market abuse to the competent authority of the regulated market; and

(b) supply the relevant information without delay to the competent authority and provide full assistance to the latter in investigating and prosecuting market abuse occurring on or through the systems of the regulated market.

### **Promotion and maintenance of standards**

6. (1) The regulated market must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of activities by persons in the course of using the facilities provided by the regulated market.

(2) The regulated market must be able and willing to cooperate, by the sharing of information or otherwise, with the competent authority, and with any other authority, body or person having responsibility for the supervision or regulation of any regulated activity or other financial service, or with an overseas regulator.

(3) For the purposes of the foregoing provision, the regulated market must have appropriate arrangements with its members enabling it to obtain confidential information from its members and to disclose such information to the competent authority and other appropriate bodies and in particular, to assist and collaborate with the competent authority without delay in response to a specific written request received from the competent authority in the performance of its functions according to law.

### **Complaints**

7. (1) The regulated market must have effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its functions:

Provided that the foregoing does not extend to complaints about the content of bye-laws made by the regulated market.

(2) The arrangements must include arrangements for a complaint to be fairly and impartially investigated by a person independent of the regulated market, and for him to report on the result of his investigation to the regulated market and to the complainant.

(3) The arrangements must confer on the person mentioned in subparagraph (2) the power to recommend, if he thinks it appropriate, that the regulated market:

(a) makes a compensatory payment to the complainant;

(b) remedies the matter complained of, or takes both of those steps.

(4) Subparagraph (b) is not to be construed as preventing the regulated market from making arrangements for the initial investigation of a complaint to be conducted by the regulated market.

#### **Default bye-laws in respect of market contracts**

8. (1) The regulated market must have default bye-laws which, in the event of a member of the regulated market being or appearing to be unable to meet his obligations in respect of one or more market contracts, enable action to be taken in respect of unsettled market contracts to which he is a party.

(2) The bye-laws may authorise the taking of the same or similar action in relation to a member who appears to be likely to become unable to meet his obligations in respect of one or more market contracts.

(3) The regulated market must have adequate arrangements for ensuring that parties to the contract are notified as soon as reasonably practicable of the default, the identity of the other parties to the contract and of any decision taken under the bye-laws in relation to contracts to which they are a party.

**L.N. of 2007**

**FINANCIAL MARKETS ACT**  
**(CAP. 345)**

**Financial Markets Act (Off- Market Deals) Regulations, 2007**

- 1.** The title of these regulations is the Financial Markets Act (Off- Market Deals) Regulations, 2007. Title.
- 2.** (1) In these regulations, unless the context otherwise requires: Interpretation.
- “Act” means the Financial Markets Act; Cap. 345.
- “authorised intermediary” means an investment firm authorised, by the competent authority or a European regulatory authority, to execute orders on behalf of clients and / or to deal on own account;
- “competent authority” means the Malta Financial Services Authority appointed under article 2 of the Act;
- “listed financial instrument” means a financial instrument listed and traded on a regulated market authorised in terms of article 4 of the Act;
- “markets” means regulated markets;
- (2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.
- 3.** Listed financial instruments may be traded outside a regulated market provided that the trade is executed by an authorised intermediary and that the authorised intermediary shall have, prior to the execution of such trade, pre-validated such trade by confirming that the listed financial instruments to be traded are held by the seller. Conditions for Off-Markets Trading.
- 4.** (1) An authorised intermediary shall report the particulars of a transaction in listed financial instruments executed outside a regulated market listed in sub-regulation (2) to the central securities depository which holds the register of such financial instruments . Report to the regulated markets.
- (2) The following is a list of the particulars referred to in sub-

regulation (1):

- (a) financial instrument traded;
- (b) financial instrument identification;
- (c) trading day and time;
- (d) type of transaction (buying and selling);
- (e) price and currency;
- (f) volume;
- (g) settlement date;
- (h) client details including name, identity card number, or passport number and address;
- (i) such other particulars as may be required by the relevant central securities depository.

**5.** Every authorised intermediary, if more than one, involved in a transaction, shall be obliged to submit a separate report drawn up in accordance with regulation 4.

Separate report by every authorized intermediary involved in a transaction.

**6.** In respect of every transaction reported to it in pursuance of regulations 4 and 5, the central securities depository shall as close through real-time as possible, through the regulated market on which those financial instruments are listed and traded, disclose to the public the information listed under paragraphs (a) to (c), (e) and (f) of regulation 4 (2), in accordance to Rules issued by the competent authority from time to time.

**7.** The purpose of these regulations is to implement the relevant provisions of the Directive and shall be interpreted and applied accordingly.

Objective.

**8.** The Off-Exchange Trading Regulations, 2004 as amended by the Off-Exchange Trading (Amendment) Regulations, 2005 are hereby being repealed.

Repeal of L.N. 286 of 2004 as amended by L.N. 56 of 2005.

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**Chairman**  
**Malta Financial Services Authority**

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**Prime Minister and**  
**Minister of Finance**

**L.N. of 2007**

**INVESTMENT SERVICES ACT**  
**(CAP. 370)**

**Appointment of Tied Agents Regulations, 2007**

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Prime Minister and Minister of Finance, acting on the advice of the Malta Financial Services Authority as the competent authority for the purposes of the Act, has made the following regulations:

Title.                   **1.** The title of these regulations is the Appointment of Tied Agents Regulations, 2007.

Interpretation.       **2.** (1) In these Regulations, unless the context otherwise requires:-

“Act” means the Investment Services Act;

“ancillary services” means the services listed in Section B of Annex 1 to the Directive;

“competent authority” means the Malta Financial Services Authority appointed under article 2 of the Act;

“European investment firm” means an investment firm as defined in Article 4(1) of the Directive authorised by its European regulatory authority within the meaning of Article 5 of the Directive or authorised by a European regulatory authority in an EEA State;

“Investment Services Licence Holder” means a person who holds an investment services Licence granted by the competent authority in terms of Article 6 of the Act;



“tied agent” means a natural or legal person, who under the full and unconditional responsibility of only one Investment Services Licence Holder or European Investment Firm and on whose behalf it acts, promotes investment and, or ancillary services to clients or prospective clients, receives and transmits instructions or orders from the client in respect of investment services or instruments, places instruments and, or provides investment advice to clients or prospective clients in respect of those instruments or services.

(2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.

Appointment of tied agents by Investment Services Licence Holders.

**3.** (1) An Investment Services Licence Holder may appoint tied agents for the purposes of promoting its services, soliciting business or receiving orders from clients or potential clients and transmitting them, placing instruments and providing investment advice in respect of such instruments and services offered by the Investment Services Licence Holder.

(2) Tied agents shall be subject to registration by the competent authority in terms of regulation 5 of these regulations and shall be exempt from the provisions of Article 3 of the Act.

(3) An Investment Services Licence Holder may appoint tied agents in Malta only if such tied agents have been admitted by the competent authority in the public register it establishes for this purpose, in terms of regulation 5 hereunder.

(4) Tied agents shall not be authorised to hold and control clients’ money and or assets.

Responsibility of the Investment Services Licence Holder appointing Tied Agents.

**4.** (1) Where an Investment Services Licence Holder decides to appoint a tied agent, it remains fully and unconditionally responsible for any act or omission on the part of the tied agent when the latter is acting on behalf of the Investment Services Licence Holder.

(2) The Investment Services Licence Holder shall ensure that its tied agent discloses the capacity in which such tied agent is acting and name of the Investment Services Licence Holder which such tied agent is representing when contacting or before dealing with any client or potential client.

(3) The Investment Services Licence Holder that appoints tied agents shall monitor the activities of its tied agents so as to ensure that they continue to comply with the requirements of these regulations and the Investment Services Rules that may be issued by the competent authority in terms of Article 6 of the Act, when acting through tied agents.

(4) The Investment Services Licence Holder that appoints tied agents shall take adequate measures in order to avoid any negative impact that the activities of the tied agents, which are not covered by the scope of the Directive, could have on the activities carried out by the tied agents on behalf of the Investment Services Licence Holder.

Registration of  
Tied Agents.

**5.** (1) The competent authority shall keep a register of all tied agents appointed in Malta. This register shall be updated on a regular basis and shall be publicly available for consultation.

(2) The competent authority shall also include in the register established in sub-regulation (1) of this regulation, those tied agents which are based in Malta but which are appointed by a European Investment Firm.

(3) The competent authority shall only admit tied agents to the register established in sub-regulation (1) of this regulation if it is satisfied that they are of sufficiently good repute and that they possess appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client.

(4) The competent authority shall not register, or shall withdraw registration where:

Source: MiFiD  
recital (39)

(a) the activities actually carried on indicate clearly that a tied agent has opted for registration in Malta for the purpose of evading the stricter standards in force in another Member State or EEA State within the territory of which it intends to carry on or does carry on the greater part of its activities; or

(b) It is no longer satisfied that the tied agent satisfies the requirements in sub-regulation (3) of this regulation.

Additional  
Requirements for  
tied agents.

**6.** The competent authority, may, by virtue of Investment Services Rules, issued in terms of article 6 of the Act, reinforce the requirements set out in these regulations or add other requirements for tied agents registered by the competent authority in Malta in terms of regulation 5 of these regulations.

Right of Appeal  
to Financial  
Services Tribunal.

**7.** Where the competent authority has refused to register a tied agent or has withdrawn a registration issued to a tied agent in terms of sub-regulation (4) of regulation 5 of these regulations, the person to whom such registration was refused and the tied agent whose registration was withdrawn, shall have a right of appeal from such decision of the competent authority to the Financial Services Tribunal and the provisions of article 19 of the Act shall apply *mutatis mutandis*.

Objective.

**8.** The objective of these regulations is to implement Article 23 of the Directive, and they shall be interpreted and applied accordingly.

**L.N. of 2007**

**INVESTMENT SERVICES ACT**  
**(Cap. 370)**

**European Passport Rights for Investment Firms Regulations, 2007**

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Prime Minister and Minister of Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

**1.** The title of these regulations is the European Passport Rights for Investment Firms Regulations, 2007. Citation.

**2.** (1) In these regulations, unless the context otherwise requires- Interpretation.

“the Act” means the Investment Services Act;

“branch” means a place of business, other than the head office, which is a part of the investment firm, and which has no legal personality and which provides the services for which the investment firm has been authorised; all the places of business set up in the same Member State or EEA State by an investment firm with headquarters in another Member State or EEA State shall be regarded as a single branch;

“competent authority” means the Malta Financial Services Authority appointed under sub-article 2A of the Act;

“core investment service” means a service listed in Section A of the Annex to the Directive, incorporated in Schedule 1 to these regulations;

“European investment firm” means an investment firm as defined in article 4(1) of the Directive authorised by its European regulatory authority within the meaning of article 5 of the Directive or authorised by a European regulatory authority in an EEA State;

“European right” means the entitlement of a person to establish a branch, or provide services, in a Member State or EEA State other than that in which it has its head office –

(a) in accordance with the Treaty as applied in the Member State or EEA State; and

(b) subject to the requirements of the Directive and subject to any regulations made under the Act and, or Investment Services Rules issued by the competent authority, in terms of article 6 of the Act, implementing such requirements as may be applicable;

“home Member State or EEA State” means

(a) where the European investment firm is a natural person, the Member State or EEA State in which the head office of that person is situated; or

(b) where the European investment firm is a legal person, the Member State or EEA State in which its registered office is situated or, if under its national law it has no registered office, the Member State or EEA State in which its head office is situated;

“host Member State or EEA State” means the Member State or EEA State where a Maltese investment firm exercises or proposes to exercise European rights;

“investment firm” means any person, other than persons to whom the Directive does not apply in terms of Article 2 of the said Directive listed in Schedule 2 to these regulations, whose regular occupation or business is the provision of any one or more core investment services to third parties on a professional basis;

“Maltese investment firm” means a person licensed in terms of the Act, whose head office is in Malta and who is entitled to carry on an activity in a Member State or EEA State other than Malta in exercise of a European right;

“non-core service” means a service listed in Section C of the Annex to the Directive, incorporated in Schedule 1 to these regulations;

“rules” means the Investment Services Rules issued by the competent authority, in terms of article 6 of the Act;

“tied agent” shall have the same meaning as that assigned to it in Regulation 2 of the Appointment of Tied Agents Regulations;

L.N. of 2007.

“Treaty” means Treaty of Rome signed in 1957, establishing the European Economic Community as subsequently amended;

(2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.

### **Part I – Exercise of Passport Rights by European investment firms**

3. (1) A European investment firm which is seeking to establish a branch in Malta in exercise of a European right shall satisfy the establishment conditions specified in sub-regulation (2) of this regulation and shall be exempt from the provisions of article 3 of the Act.

Exercise of passport rights by European investment firms - establishment.

(2) The establishment conditions for the purposes of this regulation are that –

(a) the European investment firm has communicated its European regulatory authority:

(i) the fact that it intends to establish a branch in Malta;

(ii) a programme of operations setting out *inter alia* the investment services as well as the ancillary services to be offered;

(iii) the organisational structure of the branch, indicating whether it intends to use tied agents;

(iv) the address in Malta from which documents may be obtained;

(v) the names of those responsible for the management of the branch.

(b) the competent authority has received, from the European regulatory authority of the European investment firm:

(i) the information which the European Investment firm had provided to it in terms of paragraph (a) of this sub-regulation;

(ii) details of the accredited compensation scheme of which the European investment firm is a member in accordance with Directive 97/9/EC.

(3) A branch of a European investment firm shall not commence business unless –

(a) it has been informed by the competent authority that it may commence business; or

(b) two months have elapsed from the date of transmission by the European regulatory authority of the information it received from the European investment firm in terms of sub-regulation (2) of this regulation;

(4) Where the European Investment Firm appoints tied agents established in Malta, such tied agents shall be assimilated to the branch which the European Investment Firm establishes in Malta and shall be subject to the Rules and regulations relating to branches.

4. (1) A European investment firm which is seeking to provide services in Malta in exercise of a European right shall satisfy the service conditions specified in sub-regulation (2) of this regulation and shall be exempt from the provisions of article 3 of the Act.

Exercise of passport rights by European investment firms - services.

(2) The service conditions for the purposes of this regulation are that:

(a) the European investment firm has communicated to its European regulatory authority:

(i) its intention to provide services in Malta;

(ii) a programme of operations stating in particular the investment services which it intends to perform and whether it intends to use tied agents in Malta.

(b) the competent authority has received the information in paragraph (a) of this sub-regulation from the European regulatory authority of the European investment firm;

Provided that where the European Investment Firm intends to use tied agents in Malta, the competent authority may request the European regulatory authority to disclose to it the identity of the tied agents which the European investment firm intends to use in Malta. The competent authority may publish such information.

5. (1) The competent authority may, for statistical purposes, require a European investment firm which has established a branch in Malta in terms of these regulations, to report periodically on its activities in Malta.

Reporting to the competent authority.

(2) In discharging its responsibilities under the Directive, the competent authority may require branches of European investment firms to provide the information necessary for the monitoring of their compliance

with rules applicable to them.

Provided that these requirements may not be more stringent than those imposed on licence holders, within the meaning of the Act, for the purposes of monitoring their own compliance with the said rules.

6. A European investment firm shall not be prohibited from advertising its services through any available means of communication in Malta provided that it complies with any applicable laws and rules and the provisions of article 11(1)(b) of the Act shall not apply to a European investment firm advertising its services in Malta.

Advertising.

7. The competent authority shall assume responsibility for ensuring that in providing investment and, or ancillary services in Malta, the branch of a European investment firm complies with the obligations laid down in Articles 13(9) 19, 21, 22, 25, 27 and 28 of the Directive and in measures adopted pursuant thereto. For this purpose the competent authority shall:

Enforcement of certain obligations by the competent authority.

(i) issue rules which the branch of the European investment Firm must follow in its operations in Malta and

(ii) have the right to examine the branch arrangements of the European investment firm and to request such changes as are strictly needed to enable the competent authority to enforce the said obligations with respect to the services and, or activities provided by the branch in Malta.

8. The European regulatory authority, in exercising its responsibilities and after informing the competent authority may carry on-site inspections at a branch which a European Investment Firm has established in Malta, in exercise of a European right.

On-site inspections by the European Regulatory Authority.

## **Part II – Exercise of Passport Rights by Maltese investment firms**

9. (1) A Maltese investment firm may exercise a European right to establish a branch if it satisfies the requirements set out in the following provisions of this regulation.

Exercise of passport rights by Maltese investment firms – establishment.

(2) The Maltese investment firm shall give the competent authority a notice of its intention to establish a branch which notice shall contain -

(a) the Member State or EEA State within the territory of which the investment firm plans to establish a branch;

(b) a programme of operations identifying the activities which it seeks to carry on through the branch , indicating whether it intends to use tied agents;



(c) the address of the proposed branch from where documents may be obtained;

(d) the proposed organisational structure of the branch and the names of the proposed managers; and

(e) such other clarifications as may be requested by the competent authority.

(3) Unless it has reason to doubt the adequacy of the administrative structure or the financial situation of the Maltese investment firm, taking into account the activities envisaged, the competent authority shall communicate the information referred to in sub-regulation (2) of this regulation to the European regulatory authority within three months of receiving all the said information from the Maltese investment firm.

(4) The competent authority shall communicate to the European regulatory authority the details of the accredited compensation scheme of which the Maltese investment firm is a member.

(5) The competent authority shall inform the European regulatory authority of any change in the details of a compensation scheme referred to in sub-regulation (4) of this regulation.

(6) If the competent authority decides to refuse to communicate to the European regulatory authority the information it received from the Maltese investment firm in terms of sub-regulation (2) of this regulation:

(a) it shall, within three months from the date when it receives all the said information, give the Maltese investment firm which gave that information the reasons for its decision in writing; and

(b) that Maltese investment firm may appeal to the Tribunal and the provisions of article 19 of the Act shall apply *mutatis mutandis*.

(7) A branch of the Maltese investment firm shall not commence business unless –

(a) the European regulatory authority notifies the Maltese investment firm that its branch may commence business in its territory; or

(b) two months have elapsed from the date of transmission of the information required in terms of sub-regulation (2) of this regulation to the competent authority. European regulatory authority.

(8) In the event of change in any of the particulars communicated in accordance with sub-regulation (2) of this regulation, the Maltese investment firm shall give written notice of that change to the competent authority at least one month before implementing the change. The competent authority shall also inform the European regulatory authority of this change.

(9) The prudential supervision of a Maltese investment firm shall be the responsibility of the competent authority whether the said Maltese investment firm establishes a branch or provides services in another Member State or EEA State or not, without prejudice to those provisions of the Directive which give responsibility to the European regulatory authority.

(10) Where a Maltese investment firm uses tied agents established in a Member State other than Malta or in an EEA State, such tied agent shall be assimilated to the branch wherever this is established and shall be subject to the provisions of the Directive relating to branches.

**10.** In exercise of its responsibilities and after informing the relevant European regulatory authority, the competent authority may carry out on-site inspections in the branch of the Maltese investment firm situated in a Member State or EEA State.

On-site visits by the competent authority.

**11.** (1) A Maltese investment firm may not exercise a European right to provide services unless the Maltese investment firm has given the competent authority, notice of its intention to provide services as specified in sub-regulation (2) of this regulation.

Exercise of passport rights by Maltese investment firms – services.

(2) For the purposes of this regulation, the Maltese investment firm shall notify the competent authorities of: –

(a) the services which it intends to provide together with a programme of operations stating in particular the investment services which it intends to provide in another Member State or EEA State, indicating whether it intends to use tied agents;

(b) the Member State or EEA State in which it intends to operate;

(3) If the European right of the Maltese investment firm derives from the Directive, the competent authority shall, within one month of receiving the information in accordance with sub-regulation (2) of this regulation, send a copy of it to the European regulatory authority

(4) When the competent authority sends the information, in terms of sub-regulation (3) of this regulation, the Maltese investment firm may start to provide the service or services in question in the host Member State or EEA State.

(5) In the event of a change in any of the particulars provided by the Maltese investment firm in accordance sub-regulation (2) of this regulation, the Maltese investment firm shall give written notice of that change to the competent authority at least one month before implementing the change. The competent authority shall inform the European regulatory authority of those changes.

(6) Where the Maltese investment firm intends to use tied agents in the host Member State or EEA State, the competent authority shall, at the request of the European regulatory authority and within a reasonable time communicate the identity of the tied agents that the Maltese investment firm intends to use in the host Member State or EEA State. The host Member State or EEA State may make public such information.

**12.** A European right shall entitle a Maltese investment firm to provide one or more core investment services:

Entitlement to provide core and non-core services.

Provided that a European right may additionally entitle a Maltese investment firm to provide one or more non-core service, but it shall in no case be exercised solely in relation to non-core services.

### **Part III – Contraventions by European investment firms**

**13.** (1) Where the competent authority ascertains that a European investment firm which has a branch established in Malta is in breach of any of the provision of the Act or any Investment Services Rules or regulations made thereunder which confer power on the competent authority, such competent authority shall, in writing, require the European investment firm to put an end to its irregular situation.

Contraventions by European investment firms.

(2) Where the competent authority has clear and demonstrable grounds for believing that a European investment firm which has a branch in Malta or which is providing services in Malta is in breach of the obligations arising from the provisions Directive and which do not confer powers on the competent authority, it shall refer those findings to the European regulatory authority of the European investment firm.

(3) If the European investment firm concerned fails to take the necessary steps to remedy and rectify its position, the competent authority shall take appropriate measures to ensure that the European investment firm concerned puts an end to its irregular situation. The competent authority shall communicate the nature of these measures to the European regulatory authority.

(4) If despite the measures taken by the European regulatory authority or because such measures prove inadequate, the European investment firm persists in acting in a manner that is clearly prejudicial to the interests of Maltese investors or the orderly functions of Maltese markets, the competent authority, shall, after informing the European

regulatory authority, take all the appropriate measures needed in order to protect Maltese investors and the proper functions of Maltese markets. This shall include the possibility of preventing the offending European investment firm from initiating any further transactions in Malta.

(5) If, despite the measures taken by the competent authority, the European investment firm persists in breaching the legal or regulatory provisions referred to in sub-regulation (1) of this regulation, the competent authority, may, after informing the European regulatory authority, take appropriate measures to prevent or penalise further irregularities and, in so far as necessary, to prevent that European investment firm from initiating any further transactions in Malta.

(6) Any measure adopted pursuant to this regulation shall be communicated to the European investment firm concerned in writing, together with reasons justifying such measures and shall be subject to a right of appeal to the Tribunal and the provisions of article 19 of the Act shall apply *mutatis mutandis*.

(7) The competent authority shall inform the European Commission without delay of any measures it takes against a European investment firm in terms of sub-regulation (4) and (5) of this regulation.

#### **Part IV – Applicability Provisions**

**14.** A person who, on the date of the coming into force of these regulations was in possession of a licence issued by the competent authority which covers the provision of an investment service classified as a core service in terms of Section A of the Annex to the Directive incorporated in Schedule 1 to these regulations, shall be deemed to be a Maltese investment firm for the purposes of these regulations:

Applicability provisions.

Provided that such person conforms with all applicable Rules issued by the said competent authority:

Provided further that such person may if already so licensed also provide a non-core service in terms of Section C of the Annex to the Directive incorporated in Schedule 1 to these regulations.

**15.** The European Passport Rights for Investment Firms Regulations 2004, as amended are hereby repealed.

Repeal of L.N. 87 of 204.

#### **Part V – Objective**

**16.** The objective of these regulations is to implement Articles 31, 32, 61 and 62 of the Directive and they shall be interpreted and applied accordingly.

Objective

## **SCHEDULE 1**

*(Regulation 2)*

### *ANNEX I*

#### **LIST OF SERVICES AND ACTIVITIES AND FINANCIAL INSTRUMENTS**

##### Section A

##### **Investment services and activities**

- (1) Reception and transmission of orders in relation to one or more financial instruments;
- (2) Execution of orders on behalf of clients;
- (3) Dealing on own account.
- (4) Portfolio management.
- (5) Investment advice.
- (6) Underwriting of financial instruments and, or placing of financial instruments on a firm commitment basis.
- (7) Placing of financial instruments without a firm commitment basis

##### Section B

##### **Ancillary services**

- (1) Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management;
- (2) Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;
- (3) Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;
- (4) Foreign exchange services where these are connected to the provision of investment services;

- (5) Investment research and financial analysis or other forms of general recommendation relating to transactions financial instruments;
- (6) Services related to underwriting.
- (7) Investment services and activities as well as ancillary services of the type included under Section A or B of Annex 1 related to the underlying of the derivatives included under Section C – 5, 6, 7 and 10 - where these are connected to the provision of investment or ancillary services.

## Section C

### **Financial Instruments**

- (1) Transferable securities;
- (2) Money-market instruments;
- (3) Units in collective investment undertakings;
- (4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
- (5) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason a default or other termination event);
- (6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and, or a Multilateral Trading Facility;
- (7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in C.6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;
- (8) Derivative instruments for the transfer of credit risk;
- (9) Financial contracts for differences.
- (10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash

or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are traded on a regulated market or a Multilateral Trading Facility, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

## **SCHEDULE 2**

*(Regulation 2)*

### **Exemptions**

1. This Directive shall not apply to:

(a) Insurance undertakings as defined in Sub-article 1 of Directive 73/239/EEC or assurance undertakings as defined in Sub-article 1 of Directive 2002/83/EC or undertakings carrying on the reinsurance and retrocession activities Referred to in Directive 64/225/EEC;

(b) Persons which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

(c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;

(d) persons who do not provide any investment services or activities other than dealing on own account unless they are market makers or deal on own account outside a regulated market or a Multilateral Trading Facility on an organized, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them;

(e) Persons which provide investment services consisting exclusively in the administration of employee- participation schemes;

(f) Persons which provide investment services which only involve both administration of employee- participation schemes and the provision of investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

(g) the members of the European System of Central Banks and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;

(h) Collective investment undertakings and pension funds whether coordinated at Community level or not and the depositaries and managers of such undertakings;

(i) persons dealing on own account in financial instruments, or providing investment services in commodity derivatives or derivative contracts included in Section C 10 of Schedule 1 to the clients of their main business, provided this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC;



(j) Persons providing investment advice in the course of providing another professional activity not covered by this Directive provided that the provision of such advice is not specifically remunerated;

(k) Persons whose main business consists of dealing on own account in commodities and,or commodity derivatives. This exception shall not apply where the persons that deal on own account in commodities and,or commodity derivatives are part of a group the main business of which is the provision of other investment services within the meaning of this Directive or banking services under Directive 2006/48/EC;

(l) firms which provide investment services and,or perform investment activities consisting exclusively in dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets;

(m) Associations set up by Danish and Finnish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;

(n) 'agent di cambio' whose activities and functions are governed by Sub-article 201 of Italian Legislative Decree No 58 of 24 February 1998.

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**Chairman  
Malta Financial Services  
Authority**

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**Prime Minister and  
Minister of Finance**

L.N.

**INVESTMENT SERVICES ACT (CAP. 370)**

**European Passport Rights for Persons Operating Multilateral Trading Facilities Regulations,  
2007**

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Prime Minister and Minister of Finance, acting on the advice of the Malta Financial Services Authority as the competent authority for the purposes of the Act, has made the following regulations:

Title and commencement.   **1.**       The title of these regulations is the European Passport Rights for Persons Operating Multilateral Trading Facilities Regulations, 2007;

Interpretation.           **2.**   (1)   In these Regulations, unless the context otherwise requires:-

“Act” means the Investment Services Act;

“competent authority” means the Malta Financial Services Authority appointed under article 2 of the Act;

“European right” means the entitlement of a person operating a multilateral trading facility to provide appropriate arrangements in the territory of a Member State or EEA State other than that in which that person has been authorized to operate such facility, so as to facilitate access to and use of their systems by remote users;

“Home Member State or EEA State” means, the Member State or EEA State in which the persons operating the multilateral trading facility are so authorised;

“Host Member State or EEA State” means the Member State or EEA State in which, a person authorised to operate a multilateral trading facility in Malta, provides appropriate arrangements so as to facilitate access to and use of its system by remote members established in that same Member State or EEA State;

“Multilateral Trading Facility” has the same meaning as that assigned to the term in Article 4(15) of the Directive.

- (2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.

### **Part I – Exercise of European Passport Rights by Persons operating a Multilateral Trading Facility established in a Member State or EEA State.**

Exercise of passport right by Persons operating a Multilateral Trading Facility established in a Member State or EEA State.

3. (1) A person who operates a multilateral trading facility in any Member State or EEA state other than Malta and which is seeking to provide appropriate arrangements in Malta in exercise of a European right shall satisfy the conditions specified in sub-regulation (2) of this regulation and shall be exempt from the provisions of article 3 of the Act.
- (2) The conditions for the purposes of this regulation are that –
- (a) the person operating the multilateral trading facility has communicated to its European regulatory authority that it intends to provide arrangements to facilitate access to and use of its facility in Malta;
- (b) the supervisory authority of the persons operating a Multilateral Trading Facility in terms of Article 31(6) of the Directive has, within one month of the receipt of the information specified in paragraph (a) of this sub-regulation, notified the competent authority of this information.

### **Part II – Exercise of Passport Rights by Persons operating a Multilateral Trading Facility established in Malta.**

Exercise of Passport Rights by Persons Licensed in Malta to operate a Multilateral Trading Facility

4. (1) Persons operating a multilateral trading facility established in Malta may exercise a European right to provide appropriate arrangements to facilitate access to and use of their systems by remote users in another Member State or in an EEA State subject to the requirements of this regulation.
- (2) A person operating a multilateral trading facility established in Malta shall give the competent authority a notice of its intention to exercise a European right wherein it shall communicate the Member State or the EEA State in which it intends to provide such arrangements.

(3) The competent authority shall communicate, within one month, the information provided in terms of sub-regulation (2) of this regulation to the European regulatory authority of the Member State or EEA State in which the person operating a multilateral trading facility established in Malta intends to provide such arrangements.

(4) The competent authority shall, on the request of the European regulatory authority of the Member State or EEA State in which the person operating a multilateral trading facility established in Malta intends to provide such arrangements, and within a reasonable delay, communicate the identity of the members or participants of the multilateral trading facility established in Malta.

**Part III – Contraventions by Persons operating a Multilateral Trading Facility in Malta in exercise of a European Right.**

5. (1) Where the competent authority has clear and demonstrable grounds for believing that a person, authorised to operate a multilateral trading facility in any Member State or EEA state and who is providing access to its systems in Malta in exercise of a European right, is in breach of its obligations arising from the provisions adopted pursuant to the Directive, it shall refer those findings to the European regulatory authority.

(2) If, despite the measures taken by the European regulatory authority or because such actions prove inadequate, the person providing access to its systems in Malta in exercise of a European right, persists in acting in a manner which is clearly prejudicial to the interests of investors in Malta or the orderly function of markets, the competent authority shall, after informing the foreign authority, take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. This shall include the possibility of preventing the person providing access to its systems in Malta, in exercise of a European Right from making the said arrangements available to remote members or participants established in Malta. The European Commission shall be informed of such measures without delay.

(3) Any measure adopted pursuant to this regulation shall be communicated to the person concerned, in writing, together with reasons justifying such measures and shall be subject to a right of appeal to the Financial Services Tribunal and the provisions of article 19 of the Act shall apply *mutatis mutandis*.

Objective

6. The objective of these regulations is to implement the relevant provisions of Articles 31 and 62 of the Directive, and the regulations shall be interpreted and applied accordingly.

**INVESTMENT SERVICES ACT  
(CAP. 370)**

**Investment Services Act (Exemption) Regulations, 2007.**

Citation and commencement.           **1.** These regulations may be cited as the Investment Services Act (Exemption) Regulations, 2007.

Interpretation.                           **2.** (1) In these regulations, unless the context otherwise requires :  
“in the same group”, in relation to any company, means any body corporate which is that company’s subsidiary or parent company, or a subsidiary of that company’s parent company;

“parent company” means a company which:

- (i) has a majority of the members’ voting rights in another undertaking (a subsidiary); or
- (ii) has the right to appoint or remove a majority of the members of the board of directors or persons entrusted with the administration of another undertaking (a subsidiary) and is at the same time a member of that undertaking;

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“private company” shall have the same meaning as that assigned to it by the Companies Act;

“the Act” means the Investment Services Act;

Investment services exemptions.           **3.** (1) The following persons are hereby being exempted for the purposes of the requirement for a licence for investment services in terms of article 3 of the Act:

- (a) the Central Bank of Malta;
- (b) the competent authority and any person who is appointed thereby in the course and for the purpose of its regulatory and supervisory functions;
- (c) a liquidator or a curator in bankruptcy acting in the course of the liquidation or bankruptcy;
- (d) a person dealing on his own account, in terms of paragraph 3 of the First Schedule to the Act, as long as he does not hold himself out as being in the business of buying instruments with a view to

selling them, nor solicits members of the public to deal with him on the basis of, or consequent to, such representations;

- (e) a person, receiving and transmitting orders on behalf of a client, executing orders on behalf of a client, providing investment advice or placing instruments without a firm commitment basis, in terms of paragraphs 1,2,6 and 8 of the First Schedule to the Act, as long as such person does not do any of the following:
  - (i) receive, directly or indirectly, any remuneration or other benefit for the service;
  - (ii) hold himself out as providing an investment service; or
  - (iii) solicit members of the public to take such services;
  
- (f) a company providing an investment service to another company in the same group, but only if:
  - (i) the service does not consist of acting in any capacity in relation to a collective investment scheme; and
  - (ii) the company does not hold itself out as providing an investment service and it does not solicit members of the public to take such services; and
  - (iii) the provision of the services is for the purpose of the group;
  - (iv) the service would not have required to be covered by a licence under the Act if it had been provided by the company to which it is provided.
  
- (g) a company operating a scheme or arrangement where the services provided consist of the execution of orders or the reception and transmission of orders , in terms of paragraphs 1 and 2 of the First Schedule to the Act, for its own employees, former employees, their dependents, or for employees, former employees or their dependents of companies in the same group, in instruments issued by the company or other companies in the group and any other instruments as may be approved by the competent authority;
  
- (h) a person resident in a third country providing the service of management of investments and, or investment advice in terms of paragraph 4 and, or 6 of the First Schedule to the Act to a collective investment scheme licensed under the Act where the competent authority is satisfied that such person is of sufficient standing and repute;
  
- (i) a person authorised as a credit institution under Directives 2006/48/EC and 2006/49/EC of the European Parliament and of

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the Council of the 14 June 2006 relating to the taking up and pursuit of the business of credit institutions which replace Directive 2000/12/EC of the European Parliament and of the Council of the 20 March 2000 relating to the pursuit and taking up of the business of credit institutions, or a person licensed under the Financial Institutions Act, to the extent that the investment service provided by such person is that of underwriting instruments, and , or placing instruments on a firm commitment basis or that of arranging for another person to underwrite instruments and, or to place instruments on a firm commitment basis, in terms of paragraph 7 of the First Schedule to the Act;

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- (j) a person authorised as a credit institution under Directives 2006/48/EC and 2006/49/EC of the European Parliament and of the Council of the 14 June 2006 relating to the taking up and pursuit of the business of credit institutions which replace Directive 2000/12/EC of the European Parliament and of the Council of the 20 March 2000 relating to the pursuit and taking up of the business of credit institutions, or a person licensed the Financial Institutions Act, to the extent that, in the course of the business that the person is authorised or licenced to carry out, that person is a party to the purchase and sale of securities to third parties, in a transaction which involves the sale of securities to be repurchased or the purchase of securities to be resold, at an agreed future date and price;
  
- (k) a person, being an individual, who manages investments, in terms of paragraph 4 of the First Schedule to the Act, in relation to a portfolio which includes instruments, for his spouse, descendants and ascendants in the direct line and their relative spouses, or his brothers and sisters, as long as such portfolio is owned by the person to whom such services are provided and does not constitute a collective investment scheme, and as long as the person providing the service does not do any of the following:
  - (i) receive, directly or indirectly, any remuneration or other benefit for the service;
  - (ii) hold himself out as providing an investment service; or
  - (iii) solicit members of the public to take such services;
  
- (l) a person who acts as manager, in terms of paragraph 4 of the First Schedule to the Act, of a portfolio which includes instruments belonging to him and to no other person, as long as:
  - (i) such portfolio has not been established for investment

purposes in the interest of other beneficiaries where such interest is legally enforceable; and

- (ii) such portfolio does not constitute a collective investment scheme.

- (m) a person providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;

For the purposes of this regulation, a service shall be deemed to be provided in an incidental manner in the course of a professional activity if the person providing such a service, does not:

- (i) receive, directly or indirectly, any remuneration or other benefit for the service;
- (ii) hold himself out as providing an investment service; or
- (iii) solicit members of the public to take such services;

- (n) a person whose main business consists of dealing on own account, in terms of paragraph 3 of the First Schedule to the Act, in commodities and, or commodity derivatives. This exemption shall not apply where the person that deals on own account in commodities and, or commodity derivatives is part of a group, the main business of which is the provision of other investment services within the meaning of the Directive or of any service which a credit institution is authorised to provide under Directives 2006/48/EC and 2006/49/EC of the European Parliament and of the Council of the 14 June 2006 relating to the taking up and pursuit of the business of credit institutions which replace Directive 2000/12/EC of the European Parliament and of the Council of the 20 March 2000 relating to the pursuit and taking up of the business of credit institutions.

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- (o) a person which provides investment services consisting exclusively in dealing on own account in terms of paragraph 3 of the First Schedule to the Act, on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets or which deals for the accounts of other members of those markets or makes prices for them and which is guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such a person is assumed



by clearing members of the same markets;

(p) a person dealing on own account in financial instruments in terms of paragraph 3 of the First Schedule to the Act, or providing investment services in commodity derivatives or derivative contracts included in Schedule 2 of the Act to the clients of its main business, provided this is an ancillary activity to its main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of the Act or banking services under the Banking Act;

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(q) a persons who manages and,or operates the business of a regulated market or which is a regulated market in terms of the Directive, and who operates a multilateral trading facility in terms of paragraph 9 of the First Schedule to the Act, subject to the verification by the competent authority of such person's compliance with the requirements of the Directive and with such other requirements which the competent authority may determine from time to time.

(r) insurance undertakings pursuing the activity of direct insurance within the meaning of Article 1 of Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, Regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, or assurance undertakings as defined in Article 1 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, or reinsurance undertakings or captive reinsurance undertakings as defined in article 2 of Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC.

(2) The exemptions laid down in paragraphs (f), (g), (h),(l) and (q) of these regulations shall not be automatically operative but their applicability shall be subject to a determination in writing by the competent authority that the requested exemption applies.

Collective  
investment  
scheme  
exemptions.

**4.** (1) The following collective investment schemes are hereby being exempted for the purposes of the requirement for a licence for collective investment schemes in terms of article 4 of the Act:

- (a) a scheme involving participants, each of which carries on a business other than that which constitutes an investment service and enters into the arrangement for commercial purposes related to that business;
- (b) a scheme which operates according to the principle of risk spreading or in respect of which the contributions of the participants and the profits or income out of which payments are to be made to them are pooled, but only if the general purpose of the scheme is commercial and not for investment purposes;
- (c) a scheme operated by a company for its own employees, former employees and their dependants, or for employees, former employees, or their dependants, of companies in the same group, in instruments issued by the company or other companies in the group and any other instruments as may be approved by the competent authority.

(2) The exemptions laid down in this regulation shall not be automatically operative but their applicability shall be subject to a determination in writing by the competent authority that the requested exemption applies.

**L.N. of 2007**

**INVESTMENT SERVICES ACT  
(CAP. 370)**

**Licence and other Fees Regulations, 2007**

Citation.

**1.** The title of these regulations is the Investment Services Act (Licence and Other Fees) Regulations, 2007.

**2.** (1) In these regulations, unless the context otherwise requires -

“Act” means the Investment Services Act;

“carry on an activity” includes but shall not be limited to marketing, advertising or otherwise promoting as may be further stipulated in Investment Services Rules issued by the competent authority in terms of article 6 of the Act;

“competent authority” means the Malta Financial Services Authority appointed under sub-article 2A of the Act;

“eligible counterparties” shall have the same meaning as that assigned to it by the Investment Services Rules issued by the competent authority in terms of article 6 of the Act;

L.N. of 2007.

“European investment firm” shall have the same meaning as that assigned to it by regulation 2 of the European Passport Rights for Investment Firms Regulations, ;

L.N. 207 of 2004.

“European management company” shall have the same meaning as that assigned to it by regulation 2 of the Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations;

L.N. 207 of 2004.

“European UCITS” shall have the same meaning as that assigned to it by regulation 2 of the Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations;

“hold or control” includes the holding by a licence holder of a mandate over a client’s bank account, or of a power of attorney to control a client’s assets: provided that a licence holder shall not be considered to be holding or controlling a client’s money or assets if a recommendation made by the licence holder can be placed into effect only by the customer or by a third party, such as a bank, acting on the customer’s behalf. The competent authority shall have the discretion to determine whether a licence holder is holding or controlling clients’ money or assets in any given case;

“home Member State or EEA State” shall have the same meaning as that assigned to it by regulation 2 of the European Passport Rights for Investment Firms Regulations and by regulation 2 of the Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations;

“professional client” shall have the same meaning as that assigned to it by Investment Services Rules issued by the competent authority in terms of article 6 of the Act;

“retail client” shall have the same meaning as that assigned to it by Investment Services Rules issued by the competent authority in terms of article 6 of the Act;

“tied agent” has the meaning assigned to it by regulation 2 of the Appointment of Tied Agents Regulations.

L.N. of 2007.

(2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.

Payment of application, licence and other fees.

**3.** There shall be paid to the competent authority by any person or body or collective investment scheme -

(a) upon submission of an application for the granting of a licence, recognition, registration or authorisation, irrespective of whether the application is eventually accepted or not, the Application Fee established in the Second Column of the Schedule;

(b) on the date of the granting of a licence, recognition, registration or authorisation, the Supervisory Fee established in the Third Column of the said Schedule; and

(c) thereafter annually, upon the anniversary of such date as is

mentioned in paragraph (b), the same annual fee established in the Third Column of the said Schedule.

Licence  
classification.

**4.** (1) A person or body applying for a licence for investment services in terms of article 3 of the Act shall be classified at the discretion of the competent authority into one of four categories which determine the financial resources requirements of licence holders, as follows:

Category 1a: Licence Holders authorised to receive and transmit orders in relation to one or more instrument and, or provide investment advice and, or place instruments without a firm commitment basis but not to hold or control Clients' Money or Customers' Assets.

Category 1b: Licence Holders authorised to receive and transmit orders, and, or provide investment advice in relation to one or more instrument and, or place instruments without a firm commitment basis solely for professional clients and, or eligible counterparties but not to hold or control clients' money or customers' assets.

Category 2: Licence Holders authorised to provide any Investment Service and to hold or control Clients' Money or Customers' Assets, but not to operate a multilateral trading facility or deal for their own account or underwrite or place instruments on a firm commitment basis.

Category 3: Licence Holders authorised to provide any Investment Service and to hold and control clients' money or customers' assets.

Category 4: Licence Holders authorised to act as trustees or custodians of collective investment schemes.

(2) The competent authority shall set out in the licence the nature of the activities which particular licence holders may carry out.

Payment to the  
competent  
Authority.

**5.** (1) There shall be paid to the competent authority by:

(a) any European investment firm establishing a branch in Malta in terms of regulation 3 of the European Passport Rights for Investment Firms Regulations, upon notification to the competent authority that it wants to establish a branch in Malta and upon the commencement of business in Malta, the relevant notification and supervisory fees established in the Second and Third Column, respectively, of the Schedule;

L.N. of 2007

L.N. 207 of 2004

(b) any European management company establishing a branch in Malta in terms of regulation 15 of the Undertaking of Collective Investment in Transferable Securities and Management Companies Regulations, upon notification to the competent authority that it wants to establish a branch in Malta and upon the commencement of business in Malta, the relevant notification and supervisory fees established in the Second and Third Column, respectively, of the Schedule;

L.N. 207 of 2004.

(c) European UCITS marketing their units in Malta in terms of regulation 8 of the Undertaking of Collective Investments in Transferable Securities and Management Companies Regulations, upon notification to the competent authority that it wants to market its units in Malta and upon the commencement of such marketing in Malta, the relevant notification and supervisory fees established in the Second and Third Column, respectively of the Schedule.

(2) In addition to the above fees, the following fees shall also be paid to the competent authority:

(a) by European Investment Firms and European management companies establishing a branch in Malta, annually, upon the anniversary of the date on which they commence business in Malta, the supervisory fee established in the Third Column of the Schedule;

L.N. 207 of 2004

(b) by European UCITS marketing their units in Malta in terms of regulation 8 of the Undertaking of Collective Investments in Transferable Securities and Management Companies Regulations, annually, upon the anniversary of the date on which they commence to market their units in Malta, the supervisory fee established in the Third Column of the Schedule.

Repeals L.N.322 of 2006 of 1995 as amended.

**6.** The Investment Services Act (Licence and Other Fees) Regulations, 2006 are hereby repealed.

SCHEDULE  
(Regulation 3 and 5)

Licence Fees

First Column	Second Column Application/ Notification Fee	Third Column Supervisory Fee
	Lm	Lm
<i>(a)</i> Investment Services Licences:		
Category 1a	300	500
Category 1b	300	600
Category 2	400	1,200
Category 3	650	1,500
Category 4	1,500	3,000
 <i>(b)</i> Collective Investment Schemes which fall within the scope of article 4 of the Act; and include schemes formed in accordance with or existing under the laws of a country other than Malta which carry on an activity in Malta:		
Scheme:	650	700
Up to fifteen sub-funds (per sub-fund)	125	125
Sixteen sub-funds and over (per sub-fund)	75	75
 <i>(c)</i> Collective Investment Schemes which qualify as professional investor funds in terms of Rules issued for this purpose by the competent authority:		
“In principle” approval	200	
Licence		
Scheme	300	300
Per sub-fund	300	125
Recognition Fees		
 <i>(d)</i> Persons providing administrative services in terms of article 9A of the Act		
	1,000	200
 <i>(e)</i> Private Schemes recognised in terms of the		

Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations	500	150
<i>(f)</i> European investment firms establishing a branch in Malta in terms of regulation 3 of the European Passport Rights for Investment Firms Regulations		
(i) authorised by their Home member State or EEA State to receive and transmit orders in relation to one or more instruments and, or provide investment advice and, or place instrument without a firm commitment basis , in terms of the Directive but are not authorized to hold and control Clients Money or Customers' Assets.	300	500
(ii) authorized by their home Member State or EEA State to provide any investment services in terms of the Directive and to hold and control Clients' Money or Customers' Assets but not to operate a multilateral trading facility or to deal for their own account or underwrite or place instruments on a firm commitment basis	400	1,200
(iii) authorized by their home Member State or EEA State to provide any investment services in terms of the Directive, and to hold and control Clients' Money or Customers' Assets	650	1,500
<i>(g)</i> European management companies establishing a branch in Malta in terms of regulation 15 of the Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations	400	1200
<i>(h)</i> European UCITS marketing their units in Malta in terms of regulation 8 of the Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations:		
(i) European UCITS Scheme	650	700
(ii) Up to 15 sub-funds (per sub-fund)	125	125
(iii) 16 sub-funds and over (per sub-fund)	75	75

#### Registration Fees



(i) Tied agents registered by the competent authority in terms of regulation 5 of the Appointment of Tied Agents Regulations:

(i) where the tied agent is an individual	35	100
(ii) where the tied agent is not an individual	50	125 and 75 per individual employed by such tied agent and who is directly involved in the provision of tied agent activities.